

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HECTOR TRINIDAD,)	Civil Action
)	No. 13-cv-03983
Petitioner,)	
)	
v.)	
)	
)	
SUPERINTENDENT S.C.I.)	
COAL TOWNSHIP, ET AL.,)	
THE ATTORNEY GENERAL OF THE)	
STATE OF PENNSYLVANIA and)	
THE DISTRICT ATTORNEY OF)	
PHILADELPHIA, PENNSYLVANIA,)	
)	
Respondents)	

O R D E R

NOW, this 30th day of September, 2014, upon
consideration of the following documents:

- (1) "Protective" Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody dated July 2, 2013 and filed by petitioner Hector Trinidad, pro se on July 9, 2013;¹
- (2) Motion for Stay and Abbey [sic] of Protective Petition for Writ of Habeas Corpus, which motion was filed July 9, 2013;
- (3) Response to Petition for Writ of Habeas Corpus, which response was filed November 7, 2013;
- (4) Petitioner's Reply to Respondent[s'] Response to Petition for Writ of Habeas Corpus Pursuant to Rule 5 of Rules Governing Section

¹ Mr. Trinidad's original petition for writ of habeas corpus was filed on July 9, 2013. However, the petition itself indicates that it was signed by petitioner on July 2, 2013. Thus, giving petitioner the benefit of the prison mailbox rule, (See Burns v. Morton, 134 F.3d 109 (3d Cir. 1998) and Rule 3(d) of the Rules Governing Section 2254 Cases in the United States District Courts), I consider July 9, 2013 the filing date of Mr. Trinidad's original petition.

2254 Petitions, which reply was filed November 21, 2013;

- (5) Report and Recommendation of United States Magistrate Judge M. Faith Angell dated December 12, 2013 and filed December 13, 2013;
- (6) Petitioner's Objections to Magistrate Judge Report and Recommendation Pursuant to 28 U.S.C. §§ 636(b)(1)(B), Local Civil Rule 72.1 IV(b):, which objections were filed December 27, 2013; and
- (7) Motion to Seek Voluntary Dismissal of Habeas Corpus Petition Pursuant to Fed.R.Civ.P. 41(a)(1), which motion was filed May 5, 2014;

it appearing that petitioner seeks to voluntarily dismiss this action without prejudice to exhaust his claims in state court; it further appearing after review of this matter that Magistrate Judge Angell's Report and Recommendation correctly determined the legal and factual issues presented in the petition for habeas corpus relief, including a recommendation that the petition for habeas corpus be dismissed without prejudice and the motion to stay and abey be denied; it further appearing that petitioner's motion to voluntarily dismiss and the recommendation of Magistrate Judge Angell each provide for the same outcome,

IT IS ORDERED that the Motion to Seek Voluntary Dismissal of Habeas Corpus Petition Pursuant to Fed.R.Civ. P. 41(a)(1) is granted.

IT IS FURTHER ORDERED that Magistrate Judge Angell's Report and Recommendation is approved and adopted.

IT IS FURTHER ORDERED that the petition for habeas corpus relief is denied and dismissed without prejudice to refile after exhausting available state court remedies.

IT IS FURTHER ORDERED that the motion to stay and abey is denied.

IT IS FURTHER ORDERED that petitioner's objections to Magistrate Judge Angell's Report and Recommendation are dismissed as moot.

IT IS FURTHER ORDERED that because petitioner has not met statutory requirements to have his case heard, and no reasonable jurist could find this ruling debatable, and because petitioner fails to demonstrate denial of a constitutional right, a certificate of appealability is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall remove this matter from civil suspense.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case closed for statistical purposes.

BY THE COURT:

/s/ JAMES KNOLL GARDNER
James Knoll Gardner
United States District Judge